



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

841 Chestnut Building
Philadelphia, Pennsylvania 19107

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ORIGINAL

NOV 14 1986

Jeffrey J. Norton, Esq.
Montgomery, McCracken, Walker & Rhoads
Three Parkway
Philadelphia, Pa. 19102

Re: Moyer's Landfill Site

Dear Jeff:

Enclosed for the Private Parties' information is a draft of the Preauthorization Decision Document for the Moyer's site, reflecting the Agency's decision on the Private Parties' application for preauthorization. Since the Document is a record of the EPA's decision and not something the Parties will be asked to sign, it is not the proper subject of negotiations. However, should the Parties have any questions or comments, they may be given to the Agency by November 24, 1986. I will be out of town next week but Gregg Crystall (597 3166) will know where to reach me. If you wish to contact Bill Ross of EPA Headquarters' Office of Emergency and Remedial Response, his number is 202 382 4645.

Sincerely yours,

A handwritten signature in cursive script that reads "Maureen".
Maureen Barden

cc: Joanne R. Denworth, Esq.
John R. Embick, Esq.

DRAFT

DECISION DOCUMENT

NOV 13 1986

PREAUTHORIZATION OF A CERCLA §111(a) CLAIM

Moyers Landfill Site - Collegeville, Pennsylvania

STATEMENT OF AUTHORITY

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), authorizes persons (other than the U.S. Government, State and local governments, or Indian tribes) to seek reimbursement for response costs incurred in carrying out the National Contingency Plan (NCP). Section 112 of CERCLA directs the President to establish the forms and procedures for filing claims against the Hazardous Substances Superfund (the Superfund). Executive Order 12316 delegated to the Environmental Protection Agency (EPA) the responsibility for such claims. The Assistant Administrator for Solid Waste and Emergency Response (AA/OSWER) is delegated authority to evaluate and make determinations regarding claims (Delegation 14-9 "Claims Asserted Against the Fund," April 16, 1984).

REMEDY SELECTED BY EPA AND SUBSEQUENT ACTION

On September 30, 1985, James M. Seif, EPA Regional Administrator for Region III, signed the Record of Decision (ROD) for the Moyer's Landfill site (Attachment 1). The ROD authorized, based on the site Receiver's/* addendum to the Feasibility Study, the site Receiver's methane gas generation/recovery alternative (the Receiver's alternative). However, the ROD provided that if negotiations with potentially responsible parties for implementation of this remedy failed and/or the methane gas alternative failed, the remedy for the site would be Alternative 4.2.

The Receiver's alternative consisted of a soil cover, storm water management, soil erosion/sediment control, leachate collection and treatment, ground and surface water monitoring, gas recovery, and site security. Alternative 4.2 consisted of a cap complying with EPA's regulations promulgated under Subtitle C of RCRA (RCRA-type cap), surface water collection and discharge, leachate collection and treatment, ground and surface water monitoring, and gas venting.

In November, 1985, a group of potentially responsible parties (hereinafter referred to as the "Private Parties") proposed to the Agency a third alternative, based on the Receiver's alternative but providing for a RCRA-type cap to be placed on the landfill rather than a soil cover. The Agency approved this "Project

/* The site Receiver was appointed in 1982 by the District Court in O'Leary v. Moyer's Landfill, Inc., No. _____ (D. _____).

Implementation Plan." The Private Parties then initiated settlement discussions; one component of the settlement offer was that the Receiver would implement the Project Implementation Plan. An agreement in principle among the Private Parties, the Receiver, EPA and the Commonwealth of Pennsylvania was reached in May, 1986. The Private Parties submitted a request for preauthorization in July, 1986, and following discussions with EPA submitted a supplement to their request for preauthorization in October.

A settlement agreement between EPA and the Private Parties is being executed simultaneously with this Decision Document.

FACTORS CONSIDERED IN PREAUTHORIZING

While preauthorization does not obligate the Fund, it does represent the Agency's commitment that if the response action is conducted in accordance with the preauthorization as approved and costs are reasonable and necessary, reimbursement, up to any maximum amount of money set forth in the preauthorization decision, will be had from the Fund, subject to the availability of appropriated monies.

In evaluating the Private Parties' request for preauthorization of a response claim, EPA has considered four general criteria:

- (1) Whether the release poses a significant threat to public health, welfare, or the environment.
- (2) Whether the proposed remedy cost-effectively addresses the threat posed by the release.
- (3) Whether the applicant for preauthorization demonstrates engineering expertise and a knowledge of the NCP and attendant guidance.
- (4) Whether the applicant demonstrates evidence of State cooperation.

FINDINGS

(1) Based on the analytical results received from the preliminary assessment and site investigation conducted by EPA, the Moyer's Landfill site was placed on the National Priorities List (NPL) in December 1982. These findings led to an EPA-initiated Remedial Investigation and Feasibility Study (RI/FS) in May, 1984. On the basis of the data contained in the RI/FS, this site satisfies the first criterion: that the release poses a significant threat to public health, welfare or the environment.

(2) The remedy which the Private Parties propose to implement at the site (i.e., site grading and runoff control; leachate management and treatment; installation of a RCRA-type cap made of synthetic material; and recirculation of leachate under the cap to provide sufficient moisture to optimize methane gas production).

EPA's ROD dated September 30, 1985 certifies that either EPA's remedy or the Receiver's remedy, together with proper operation and maintenance, is a remedy which mitigates and minimizes damage to protect public health, welfare and the environment.

Further, EPA has also determined that the remedy proposed by the Private Parties is a cost-effective means to address the threat posed by the release, and is a permanent remedy which will reduce the mobility and toxicity of the hazardous substances at the site to the maximum extent practicable.

These findings satisfy the second criterion.

(3) The Private Parties request for preauthorization was evaluated for consistency with the NCP and to determine if it supplied the information identified in the Guidance on Preauthorization and other relevant Agency guidance. The results of this evaluation are discussed below.

(4) The Commonwealth of Pennsylvania is a party to the Consent Decree for the remedy at this site and has therefore agreed that the remedy selected by EPA is appropriate, that the Receiver and the Private Parties are capable of carrying out the remedy. Further, Pennsylvania has agreed in its letter dated August 26, 1986 to cooperate in the remedial action at the Moyer's site. This satisfies the fourth criterion.

Analysis of Consistency with the NCP

Section 111(a)(2) of CERCLA authorizes the payment of claims for costs incurred as a result of carrying out the NCP. In order for such costs to be considered within the meaning of section 111(a)(2) of CERCLA, the person undertaking the response action must comply with relevant provisions of the NCP. The provisions of the NCP that are relevant to the remedy under consideration are:

- (1) 300.25(d) (seeking Fund reimbursement)
- (2) 300.38 (worker health and safety);
- (3) 300.68 (remedial actions), except for subsections (a), (b), (e)(2)(xvi), and (f)(iv); and
- (4) 300.69 (documentation and cost recovery), except for subsection (d), which applies to Federal agencies.

The Private Parties filed a preauthorization request with EPA in advance of undertaking work at the site. This satisfies point (1) of the NCP provisions listed above.

The Receiver must develop a Project Health and Safety Plan for the Moyer's site. As the Project Implementation Plan provides, the Project Health and Safety Plan must be approved by EPA prior to initiating work on-site. This will satisfy point (2) of the provisions of the NCP listed above. As a term and condition of

preauthorization, the Private Parties shall implement the Project Health and Safety Plan.

The ROD-forms the conceptual framework of the cleanup and states the goals for the design work. The remedial design will take these cleanup goals and objectives and determine how they can be best achieved (i.e., establish trench depths, erosion and sedimentation control measures, composition of the cap). While the Private Parties' request for preauthorization contains various activities to be undertaken during the design phase, the design shall address, but should not be limited to, the following areas:

- A) Site mapping
 - air and ground surveying
 - topographic mapping at a scale of 1"=50' with a 2 foot contour interval
- B) Site plan to be developed to show all existing features of the site
- C) Subsurface investigation to determine
 - depth to bedrock
 - nature of the weathered bedrock zone
 - leachate flow characteristics
 - landfill saturation conditions
 - ground water characterization
 - leachate characterization
- D) Leachate Collection
 - trench configuration
 - trench depths
 - system capacity
 - materials to be used
- E) Leachate Recirculation*
 - pumping facilities
 - piping
 - distribution of leachate under cap
- F) Leachate Treatment
 - plant capacity
 - treatment technology
 - outfall information
 - treatability studies
 - leachate characterization
- G) Landfill Cover/Cap
 - cap configuration
 - regrading and slopes management
 - clay vs. HDPE liner on various site areas
 - materials to be used in all parts of the cover/cap (e.g., backfill, filter fabric, topsoil, clay, vegetation) and amounts of each (i.e., 24 inches

* Leachate Recirculation is a part of methane gas generation/recovery and is not eligible for Fund reimbursement.

- of clay, etc)
 - how interfaces will be constructed (e.g., HDPE/clay, HDPE/leachate clay/leachate)
 - how gas venting/management will be integrated into landfill cover
- H) Surface Water Management
- regarding
 - drainage and runoff
 - collection
- I) Gas Venting/Management*
- installation
- J) Analysis of Federal and State environmental standards applicable or relevant and appropriate to the site, and how the remedy will comply with such standards
- K) A plan describing a complete Operation and Maintenance program
- L) If the design indicates that alternative methods may be used in construction, the designer will analyse for cost effectiveness

To ensure that the Private Parties' design complies with the NCP and that the design consists of cost-effective elements, the the Private Parties' design shall address at a minimum the areas listed above. These elements shall be seen as a term and condition of preauthorization.

The Consent Decree specifies that EPA will review and approve of the design phase. The Private Parties will be required, as is customary in design reviews, to request EPA's review at 10%, 30%, 60%, and 90%. The 90% design submission will also include the blueprints and bid specifications necessary for the construction phase.

The design will establish the requirements for ground water monitoring and the ongoing site testing and analysis. The quality assurance/quality control procedures cannot be developed until the design is well underway. It is a term and condition of preauthorization, the Private Parties must develop a detailed quality assurance plan. In addition, once environmental or performance standards are established by EPA's approval of the design, the Private Parties must obtain EPA's prior approval to modify environmental or performance standards.

Decisions on the following elements will impact the cost of the remedy: trenching level; design of the leachate collection, recirculation and treatment system; erosion and sedimentation control measures; and the composition of the cap. For this reason and due to the discrepancy between EPA's cost estimates and the cost estimates contained in the Private Parties' request

* Gas Venting/Management costs associated with methane gas generation/recovery are not eligible for Fund reimbursement.

for preauthorization, EPA has based the amount preauthorized on estimated design costs only. That is, while EPA is preauthorizing the Private Parties for both design and construction, the amount preauthorized is based only on Receiver's \$600,000 estimate for design cost. To enable the Parties to be reimbursed for costs associated with construction of the remedy, the terms and conditions provide that the Private Parties shall submit a revised application for preauthorization upon completion of the design phase of the project. EPA will then revise the amount preauthorized based on a more certain cost of construction. In addition, the Private Parties may submit a revised application for preauthorization if it is subsequently determined that it is necessary to modify the actions that EPA preauthorized, or if it becomes apparent that the project's design costs will exceed the approved cost. The information submitted by the Private Parties when supplemented by the terms and conditions above satisfy point (3) of the provisions of the NCP listed above.

Section 300.69 of the NCP requires documentation of all phases of response actions. The Private Parties' application proposed the collection of documents for all phases of design and construction. The terms and conditions reiterate the requirements necessary to support and document claims, and include documentation that: 1) any response activities conducted were preauthorized by EPA, 2) any significant deviation from the EPA preauthorization was approved in advance by EPA, 3) all claimed costs are well documented in accordance with generally accepted accounting principles and practices consistently applied, and 4) all claimed costs were preauthorized and are reasonable and necessary in accordance with the appropriate Federal cost principles (non-profit organizations - OMB circular A-122; profit making organizations - 48 CFR Subparts 31.1 and 31.2). All cost documentation and any records relating to claims shall be maintained for a period of not less than six years from completion of the remedial action and EPA shall be provided with access to the Private Parties' records. At the end of six years the Private Parties shall notify EPA and allow EPA the opportunity to take possession of the records before they are destroyed. This satisfies point (4) of the NCP provisions listed above.

In order for EPA to carry out its oversight role, the Receiver shall provide necessary site access and shall immediately notify the Agency if she is unable to initiate or complete the preauthorized response action.

Analysis of Consistency with EPA Guidance

EPA has evaluated the Private Parties' proposal to implement site cleanup and the proposed level of Fund participation and has determined that a settlement with the Private Parties for the remedy is appropriate under the EPA Interim Settlement Policy.

The Private Parties' application for preauthorization, as requested in the Guidance, proposes procurement procedures which are designed to ensure maximum open and free competition. The

terms and conditions specify the requirements to ensure such maximum open and free competition and to ensure that goods and services are secured at a reasonable cost. These terms and conditions include the use of a Differing Site Conditions clause equivalent to that found at 40 CFR Part 33.1030(4); the use of bid evaluation procedures that provide for the award of contracts to the lowest, responsive, responsible bidder, where the selection can be made principally on the basis of price; the settlement and satisfactory resolution of all contractual and administrative issues arising out of preauthorized actions, in accordance with sound business judgement and good administrative practice; the issuance of invitations for bids or requests for proposals, selection of contractors, approval of subcontractors and the management of contracts in a manner to minimize change orders and prevent claims; and the settling of protests, claims disputes, and other related procurement matters.

The Private Parties propose to award a fixed price contract to the lower bidder of two engineering firms which were selected because of their past work at the site and the fact that they were initially selected through a competitive process. If the Parties subsequently determine that they are unable to award a fixed price contract for design, the Parties will notify EPA prior to the award of another type of contract.

The Private Parties also propose to award a fixed price contract for construction. EPA will review the construction bid specifications package, including the contractor selection criteria. The Private Parties' application for preauthorization, as required in the Guidance, commits the Parties to formal advertising, the use of sealed bids and the award of the construction contract to the lowest, responsive responsible bidder (or lowest responsive bidder if the Receiver uses pre-qualification to determine responsible bidders as proposed). The terms and conditions contain these requirements to ensure reasonable costs for construction of the remedy. If the Parties subsequently determine that they are unable to award a fixed price contract for construction, the Parties will notify EPA prior to the award of another type of contract.

The Private Parties' application for preauthorization, as provided in the Guidance, proposes a schedule for submitting claims against the Fund. However, the proposed schedule covered both the design and construction phases. Following discussions between EPA and the Private Parties, the terms and conditions provide that a claim may be filed upon completion of the design, and further states that the schedule for filing subsequent claims shall be proposed by the Private Parties in their revised application for preauthorization covering the construction phase. The Agency is committed to approving a claims schedule which minimizes the funding burden on the Parties.

In summary, while the Private Parties' preauthorization request contains several inaccuracies (e.g., comparisons between EPA's and the Private Parties' cost estimates, EPA's sample

list of applicable, relevant and appropriate requirements was labeled as final) the Private Parties' preauthorization request demonstrates a knowledge of relevant NCP provisions and EPA guidance for the conduct of a remedial action.

As provided by section 112(b)(2)(C) of CERCLA, EPA will adjust the Private Parties' claims using the facilities and services of private insurance and claims adjusting organizations or State agencies, or, to the extent necessitated by extraordinary circumstances, where the services of private organizations or State agencies are inadequate, Federal personnel. In making a determination whether costs are allowable, the claims adjuster will rely upon the appropriate Federal cost principles (non-profit organizations OMB circular A-122; profit making organizations - 48 CFR Subparts 31.1 and 31.2).

DECISION AND TERMS AND CONDITIONS

I preauthorize the Private Parties identified in the Consent Decree (Attachment 2 hereto) to submit a claim(s) against the Hazardous Substance Response Trust Fund not to exceed three hundred thousand dollars (\$300 thousand), for not more than fifty percent (50%) of reasonable and necessary eligible costs, as determined in accordance with ¶ VIII.9. of the Consent Decree, incurred in carrying out the remedy set forth in the Project Implementation Plan which is an attachment to the Consent Decree (Attachment 2 hereto), subject to the following terms and conditions:

- ° The Receiver shall implement a worker health and safety plan.
- ° The Receiver shall demonstrate that the design addresses, at a minimum, the following areas:
 - Site mapping
 - Site plan showing all existing features of the site
 - Subsurface investigation
 - Leachate Collection
 - Leachate Recirculation
 - Leachate Treatment
 - Landfill Cover/Cap
 - Surface Water Management
 - Gas Venting/Management
 - Analysis of applicable or relevant and appropriate standards
 - O & M Plan
 - Alternative Construction Methods
- ° Modification of design elements or performance requirements identified in the design report shall require approval by the AA, OSWER or his designee.
- ° The Receiver shall, except where EPA has determined that a waiver is appropriate, comply with the substantive requirements of applicable or relevant and appropriate Federal and State public health and environmental statutes and

regulations.

- ° The Receiver must provide for site management sufficient to ensure continuing protection of human health and the environment. Such site management shall include the filing of deed and plat notices.
- ° The Receiver shall develop and implement:
 1. Procedures which ensure price competition among two or more architectural and engineering firms. Bid evaluation procedures for construction of the remedy which provide maximum open and free competition, do not unduly restrict or eliminate competition, provide for the award of contracts to the lowest, responsive, responsible bidder, where the selection can be made principally on the basis of price.
 2. Procedures to settle and satisfactorily resolve, in accordance with sound business judgement and good administrative practice, all contractual and administrative issues arising out of preauthorized actions. The Receiver shall issue invitations for bids or requests for proposals, select contractors, approve subcontractors, manage contracts in a manner to minimize change orders and prevent claims, settle protests, claims disputes, and other related procurement matters, and handle subcontracts to assure that work is performed in accordance with terms, conditions and specifications of contracts.
 3. Detailed quality assurance plans for design activities (e.g., sampling, monitoring, etc.) and construction activities (e.g. sampling, operations, etc.) in accordance with relevant guidance.
- ° The Receiver shall notify EPA prior to the award of other than a fixed price contract for design or construction.
- ° The Receiver shall provide EPA with site access and shall immediately notify the Agency if she is unable to initiate or complete the preauthorized response action.
- ° In submitting claims to the Fund, the Receiver shall:
 - 1) Document that response activities were preauthorized by EPA.
 - 2) Substantiate all claimed costs in accordance with generally accepted accounting principles and practices consistently applied.
 - 3) Document that all claimed costs were eligible for reimbursement pursuant to this preauthorization and are reasonable and necessary in accordance with the appropriate Federal cost principles.

- 4) Document that all claims presented to the Fund have been presented to any known responsible party and had not been satisfied within sixty days of presentation. (If the first claim was denied by the responsible party or not responded to, and there is no reason to believe that subsequent claims would be honored by such responsible party, the denial of the first claim, or lack of response, will be considered denial of every subsequent claim.)
- ° The Receiver shall maintain all cost documentation and any records relating to its claim for a period of not less than six years from completion of the remedial action and shall provide EPA with access to its records. At the end of six years the Receiver shall notify EPA and allow EPA the opportunity to take possession of the records before they are destroyed.
 - ° Claims may be submitted by the Receiver only while the Defendants identified in the Consent Decree (Attachment 2 hereto) and the Receiver are in compliance with the terms of the Consent Decree and no more frequently than the following:
 1. Completion of the design phase; and
 2. Completion of segments of construction phase as established by EPA's preauthorization of funds for the construction phase.
 - ° If the Receiver finds it necessary to modify the actions that EPA preauthorized, or if it becomes apparent that the project's design costs will exceed the approved costs, costs, private Parties may submit to EPA a revised application for preauthorization. Further, upon completion of the design phase, the Private Parties shall submit to EPA a revised application for preauthorization.
 - ° EPA shall consider requests for preauthorization in a timely manner and will preauthorize up to fifty percent (50%) of reasonable and necessary costs to implement the approved remedy, as determined in accordance with ¶ VIII.9. of the Consent Decree.
 - ° Claims shall be submitted to the Administrator, EPA, Washington, D.C., Attention Director, Office of Emergency and Remedial Response. EPA shall provide the appropriate form(s) for such claims.
 - ° Claims will be adjusted using the facilities and services of private insurance and claims adjusting organizations or State agencies, or, to the extent necessitated by extraordinary circumstances, where the services of private organizations or State agencies are inadequate, Federal personnel. In making a determination whether costs are

allowable, the claims adjuster will rely upon the appropriate Federal cost principles (non-profit organizations - OMB circular A-122; profit making organizations 48 CFR Subparts 31.1 and 31.2).

- ° Payment of any claim shall be subject to the Receiver subrogating to the United States its rights as claimant to the extent to which its response costs are compensated from the Fund.

- ° Eligible costs

The Receiver may request reimbursement for up to fifty percent of reasonable and necessary eligible costs incurred, consistent with the NCP, in carrying out the remedy above, with the following limitations:

- Costs may be incurred only after the date of this pre-authorization;
- Costs incurred for design, construction and operation of the methane gas extraction program are not eligible for reimbursement from the Fund;
- Eligible long-term operation and maintenance costs shall be limited to that portion necessary to ensure that the remedy is operational and functional, and those operation and maintenance costs shall be reimbursable only to the extent that they are incurred within one year of completion of the remedy.

- ° If any material statement or representation made in the application for preauthorization is false, misleading, misrepresented, or misstated and EPA relied upon such statement in making its decision, the preauthorization by EPA may be withdrawn. Criminal and other penalties may apply.
- ° Where the response action is determined to be ineffective due to acts or omissions of the claimant, payment of the claim will be adjusted accordingly. EPA may require the claimant to submit any additional information needed to determine whether the actions taken were reasonable and necessary.
- ° This preauthorization shall be effective as of the date of entry of the attached Consent Decree.

J. Winston Porter	Date
Assistant Administrator,	
Solid Waste and Emergency Response	

ATTACHMENTS

1. EPA Record of Decision for the Moyer's Landfill Site
2. Consent Decree
3. Civil and Criminal Penalties

ATTACHMENT 3

CERCLA PENALTY FOR PRESENTING FRAUDULENT CLAIM

Any person who knowingly gives or causes to be given false information as a part of a claim against the Hazardous Substance Response Trust Fund may, upon conviction, be fined up to \$5000 or imprisoned for not more than one year, or both. (42 USC 9612 (b)(1).)

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

The claimant will forfeit and pay to the United States \$2,000, plus double the amount of damages sustained by the United States. (31 USC 3729 and 3730.)

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM
OR MAKING FALSE STATEMENTS

The claimant will be charged a maximum fine of not more than \$10,000 or be imprisoned for a maximum of 5 years, or both. (See 62 Stat. 698, 749; 18 USC 287, 1001.)